**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO.2053 OF 2000**

Roha Dyechem Ltd., )
having office at )
Suryodaya Mill Compounds, )
M.P. Mill Road, Tardeo, )
Mumbai-400 034. )..Petitioner

Versus

1.The State of Maharashtra )
Industries & Labour Department)
Sachivalaya, Mumbai-400 032. )
2.The Secretary, Grocery )
Markets & Shops Board, )
Mathadi Bhavan, 50, Devji )
Ratansey Marg, Danabunder )
Mumbai-400 009. )
3.The Collector, Alibag, )
Dist. Raigad. )
4.The Tehsildar, Roha, )
Dist. Raigad. )
5.Maharashtra Rajya Mathadi )
Transport and General Kamgar )
Union, a Trade Union )
Registered under the Trade )
Union Act, having office at )
Jivraj Bhanji Shah Market )
3rd Floor,Near Masjid Station)
Mumbai-400 009. )..Respondents

Mr. P.K. Rele, Senior Advocate with Mr. Vinod Tayade and Mr. Piyush Shah, for the Petitioner.

Mr. K.M. Naik with Mr. Sanjay Dhulapkar for Respondent No.2.
Mr. Vinay Sonpal, AGP for Respondent Nos.1,3 and 4.

**CORAM : F.I. REBELLO &**
**R.V. MORE,JJ.**
**DATED : 25TH JANUARY, 2007**

JUDGMENT (PER F.I. REBELLO, J.):

. The petitioner a Public Limited Company, engaged in the business of manufacturing of food colours, has a factory

at Roha Industrial Estate. By the present petition the petitioners seek to challenge demand made by letter dated 29th February, 2000 by respondent No.4, for a sum of Rs.78,086.74 paise and recover the same as land revenue. This was pursuant to the letter issued by Respondent No.2 dated 27th January, 1998. The respondent No.2 is the Grocery Markets and Shops Board constituted under the provisions of the Maharashtra Mathadi, Hamal & Other Manual Workers (Regulation of Employment and Welfare) Act, 1969, which hereinafter shall be referred to as the Mathadi Act. The petitioners were registered with the Respondent No.2 Board on 1st July, 1994. The Mathadi Act was extended to the area where the petitioners have their factory as on 26th December, 1979. The petitioners are engaging Mathadi workers for the purpose of the Act under the scheme framed under the Mathadi Act. According to the petitioners they have entered into settlements with the Union representing the Mathadi workers, and as such the workmen are entitled only to the amounts to be paid on piece rate basis as set out in Clause 5 of the Settlement of June, 1994. Another settlement came to be entered into on 6th February, 1996. Though the settlement was between the Union and the Petitioners the respondent board had intervened. One of the issues was payment of Dearness Allowance and that was covered by clause 6(A) which reads as under:-

> "6.(A) By above referred terms of settlement, the company has substantially increased the payments.

The Board of the Union however stated that the Dearness Allowances is statutory payment over and above these rise in rates and payments. The Company will discuss on this issue if payment of DA is statutory payment for piece rate agreements and that too over and above agreed rates and payments."

The next settlement was entered into on 5th November, 1999 between the petitioners and the Union representing the Mathadi workers. We may gainfully reproduce the relevant portion of Clause 1 and Clause 2 of the Settlement which reads as under:-

1) Rate Revision:

A) As agreed the Mathadi Workmen will be paid the following rates for the following jobs:-

1. Loading Per ton Rs.17.00 + 41% Levy

2. Unloading Per ton Rs.15.00 + 41% Levy

3. Stacking Per ton Rs.17.00 + 41% Levy

4. Warai Per ton Rs.19.31 + 41% Levy

+ Amount equivalent to the D.A. declared from time to

time on basic amount.

B) Drum:

| | | |
|---|---|---|
| 1. Loading | Per item Rs.00.45 + 41% Levy | |
| 2. Unloading | Per item Rs.00.40 + 41% Levy | |
| 3. Stacking | Per item Rs.00.45 + 41% Levy | |
| 4. Warai | Per item Rs.00.43 + 41% Levy | |
| | + Amount equivalent to D.A. declared from time to time on basic. | |

(2) No other amount will be paid to the mathadi workmen than the amount specified above. So also all the payable amount will be (charges, levy, D.A.) will be deposited with the Board. The difference payable of the revised rates will be paid to the Board within ten days. As per this statement, the Mathadi workmen will carry out only the jobs of loading, unloading and stacking at the agreed rates."

. One more settlement was entered into in April, 2003 applicable from 1st January, 2002. The English translation given to us has omitted the essential part of Clause 1 which reads as under;-

"In so far as Dearness Allowance parties would be bound by the decision of the High Court."

2. The petitioners have challenged the demand for recovery of dues as arrears of land revenue on the following grounds:-

(1) Whether the Special Allowance (Dearness Allowance) notified with reference to the Consumer Price Index of Bombay City linked with basic wages would apply to the petitioners establishment in Raigad.

(2) Whether the said promulgation would have any application to piece rate wages fixed under the settlement.

(3) Once a piece rate is fixed whether the question of payment of D.A. would arise.

2. The petition has been opposed by the Respondent No.2. It has been stated that the petitioners are depriving the Mathadi workers the right to receive Dearness Allowance which is received by all industrial workers on the basis of Consumer Price Index and which is being paid for almost 30 years by all the employers to Mathadi workers registered under the Mathadi Act, apart from wages and other service benefits. The Mathadi Act, it is stated, was enacted to prohibit exploitation of the mathadi workers by the

employers/contractors who used to bargain with the rates of wages with the individual Mathadi workers or their leaders for getting their work done and without offering them any other benefit including dearness allowance. The respondent board was constituted under Section 6 of the Mathadi Act by respondent No.1 for effective implementation of the provisions of the Mathadi Act. A scheme has been framed under the Act which is applicable to the Mathadi workers. The Board consists of equal number of representative of registered employers, of Mathadi workers as well as representatives nominated by the State of Maharashtra. Right from the constitution of the Board, the registered employers were expected to calculate the amount of wages on the basis of rate fixed by respondent No.2 board and to be deposited with the Board along with levy fixed by the Respondent No.2 Board. The rates of wages so fixed do not include Dearness Allowance and since 1970 the Dearness Allowance to be paid to Mathadi workers used to be fixed in the month of November of every year after taking into consideration the Consumer Price Index showing the rate of inflation in the market. The Board every November, at its meeting considering the Consumer Index figure, fixes the increase of Dearness Allowance. Under Clause 33 of the Scheme the Board is empowered to pass resolution and accordingly it has been so doing. The component of Dearness Allowance cannot be decided by entering into a settlement as it has been fixed by the Board. Clause 33 of the Scheme vests power in the Board to fix the rate of wages and other

benefits payable to Mathadi workers. The payment of Dearness Allowance on the basis of Consumer Price Index, it is submitted is a statutory payment over and above the rise in the rate of wages agreed to be paid. As the petitioners are not paying Dearness allowance the board is left with no other alternative but to recover the amount under Section 13 of the Mathadi Act.

. An additional affidavit came to be filed on 21st July, 2002 in answer to an affidavit filed on behalf of the petitioners. It is pointed out that under the Mathadi Act there are about 22 Boards functioning throughout the State of Maharashtra and there are around 2.00 lakh Mathadi workers registered with them. In Mumbai alone there are 50,000 Mathadi workers registered under nine Boards. The Grocery Markets and Shops Board is one such Board and has around 15,000 Mathadi workers registered under the Districts of Mumbai, Raigad and Thane. There are about 5000 employees registered with the Respondent No.2 Board in the Districts of Mumbai, Raigad and Thane. The petitioner is one of them. In so far as the wage rates are concerned payable to the Mathadi workers by the employers the wage rates prevailing at that time the employer registered with the Board is maintained. The Board on the said wage rate levies a charge of 41%. Apart from this the employer is required to pay Dearness Allowance as fixed by the Board over and above the wage rate prospectively. The petitioner company has not paid the Dearness Allowance on the ground that they have

entered into Agreements/Settlements with the Union representing the Mathadi Workers. Some of the Notifications issued in the year 1979, 1989 and 1995 and Resolutions passed have been annexed.

. Another affidavit came to be filed on 22nd March, 2002 on behalf of the Board. It is explained that though the Mathadi Workers employed with the petitioners may be drawing wages more than the minimum wage, the Mathadi workers employed with the petitioners will be drawing lesser wages than other industries as they are deprived of the benefits of Dearness Allowance fixed by the Board. To the contention of the petitioners, that Dearness Allowance is payable to only establishment who made the payment towards wages and D.A. fixed by the Board,the same is categorically denied.

. Pursuant to the direction issued by this Court at the time of hearing an additional affidavit has been filed on 18th January, 2007. Reference is made to what has been set out in the affidavit of Mr. Pol on behalf of the Board that after registration over and above the existing wage rate the Board levies charges on wage rate which at the relevant time was 41%. Apart from that the employee is required to pay Dearness Allowance as fixed by the Board. The rates fixed between the petitioners and the Mathadi Workers at the time of registration are accepted by the Board as basic rates of wages.

4. On behalf of the Board learned Counsel has drawn our attention to the Schedule to the Act to point out that the area within which the establishment of the petitioner is situated falls within the area covered by the Board pursuant to the Notification on 26th December, 1979. Our attention is then invited to Section 3(2)(d) of the Mathadi Act which reads as under:-

> (2) In particular, a scheme may provide for all or any of the following matters that is to say -
>
> (a).....
> (b).....
> (c).....
>
> (d) for regulating the employment of registered unprotected workers and the terms and conditions of such employment, including rates of wages,hours of work, maternity benefit, overtime payment, leave with wages, provision for gratuity and conditions as to weekly and other holidays and pay in respect thereof."

Our attention is then invited to Clause 33(1) of the Scheme which reads as under:-

> 33. Wages, allowances and other conditions of

service of registered workers:-

(1) Without prejudice to the provisions of any award, it shall be, unless otherwise specifically provided for in this scheme, an implied condition of the contract between a registered worker (whether in the pool or on the monthly register) and registered employer that the rates, allowances and overtime, hours of work, rest intervals, leave with wages and other conditions of service shall, subject to the provisions of sub-clauses (2), (3), (4), (5) and (6) be such as may be fixed by the Board for each category of registered workers.

(2).....
(3).....
(4).....

(5) In fixing, revising or, as the case may be, modifying the conditions of service of the registered workers, the Board shall have regard to the cost of living, the prevalent conditions of service in comparable employments in the local area, the capacity of the registered employers to pay and any other circumstances which may seem relevant to the Board."

Section 25 of the Act which is relevant reads as under:-

> "**Contracting out.-** Any contract or agreement, whether made before or after the commencement of this Act, whereby a registered unprotected worker relinquishes any right conferred by, or any privilege or concession accruing to him, under this Act or any scheme, shall be void and of no effect in so far as it purports to deprive him of such right or privilege or concession."

Learned Counsel rely on the Judgment of a learned Bench of this Court in **Vaz Forwarding (P) Ltd. v. State of Maharashtra 1994 II CLR 904** points out to the scheme of the Act and that the Board constituted under Section 6 of the Act has powers to determine the wages of unprotected workmen. Our attention is also invited to the finding of the learned Division Bench which held as under:-

> "In our judgment, the Iron and Steel Board has ample powers, both under the Act and the scheme to revise the wages payable to the unprotected workers from time to time and the grievance of the petitioners on that count cannot be acceded to."

5. The learned Counsel for the petitioners had submitted that special (Dearness) allowance notified with reference to Consumer Price Index of Bombay City linked back wages cannot be applied to the petitioner who are located in Raigad

District. No such relief in the matter of fixation of fixation of Dearness Allowance has been sought. In our opinion, therefore, such an argument cannot be countenanced. Apart from that in the reply filed by the Board it would be clear that Dearness Allowance is fixed by the Board on which are represented the representatives of employers, workmen and the State Government. The decision, therefore, is collective. In the additional affidavit of 21st September, 2006 it has been pointed out, that for Greater Mumbai, Raigad and Thane there is only one Grocery Market and Shops Board. The Dearness Allowance for Greater Mumbai, Thane and Raigad districts is fixed by the Board on the basis of Consumer Price Index declared for Mumbai Sector by the Office of the Commissioner of Labour every year. The cost of living in Thane and Raigad Districts is more than Greater Mumbai. However, the Dearness Allowance for all the aforesaid three districts is the same because of their proximity. The petitioner company’s factory is located close to the Greater Mumbai District and, therefore, the Dearness Allowance fixed for Raigad District is same as that of Greater Mumbai. The Consumer Price Index for Mumbai centre, it is reiterated is the basis for calculation of Dearness Allowance. In the aforesaid three Districts i.e. Greater Mumbai, Thane and Raigad the Dearness Allowance is same because of their proximity.

. The various circulars by which the Dearness Allowance has been fixed every year right from 1979 have not been

challenged. In our opinion, therefore, apart from the fact that the Dearness Allowance is fixed by the Board a representative body of employers, workmen and State Government and the practice is to fix D.A. in November, every year, the Circulars issued having not been challenged the contention as urged on behalf of the petitioner on this count must be rejected.

6. We may now address ourselves to the main issue as to whether the Dearness Allowance is statutory in nature and an employer who is bound to pay the same, irrespective of the settlement entered into, between the employer and his workmen. Having due regard to the scheme of Section 25 of the Act, any contract or agreement which has the effect of a registered unprotected workmen relinquishing any right conferred by the Act or the Scheme is void and of no effect, in so far as it purports to deprive the workmen of such right or privilege or concession. In other words this right, privilege or concession are the minimum which a registered unprotected worker is entitled to. It is always open to the employer and the workmen and/or their union to settle for better benefits or additional benefits, then the right, privileges or concession and that is not prohibited. Wages are defined under Section 2(13) of the Act to include all remunerations expressed in terms of money or capable of being so expressed which would, in terms of contract of employment, express or implied were, fulfilled, be payable to an unprotected worker in respect of work done in any

scheduled employment including rates of wages, hours of work and other benefits as set out therein in terms of the scheme framed in exercise of the powers conferred by sub-section (1) of Section 4 of the Mathadi Act. Regulation 6 provides that the Board may take such measures as it may consider desirable for carrying out the objectives of administering the scheme. Under Regulation 11(v) the Board is empowered to determine the wages, allowances and other conditions of service. Apart from definition of wages which includes all the remuneration payable the expression allowance, also will include D.A. which even otherwise can fall within the expression "charges". Regulation 33 expressly provides that it shall be an implied condition of the contract between a registered worker and registered employer that the rates, allowances and overtime, hours of work, etc., shall be as may be fixed by the Board for each category of registered workers. Therefore, on an employer registering with the Board, an unprotected worker as an implied condition of service with the employer, would have to be paid wages and allowances as fixed by the Board. Regulation 33(5) provides for revision of wages. It, therefore, cannot be disputed that in respect of an industry registered under the Mathadi Act, the registered employer has to pay to an unprotected workmen registered under the Act at least the rates of wages and allowances as fixed by the Board. It is open to the employer to pay more. However, it will not be open to an employer to merge the allowances, like D.A., which are fixed by the Board. The employer is bound to pay the same, the

employer however can improve on the same. By virtue of Section 25 the workmen or its union cannot contract out of these provisions. Any agreement contrary would be null and void. The Board in its affidavit points out that when an employer is registered with the Board, the Board accepts the existing wage rate at the time of registration as the basic wage to be paid. Apart from that the employer has to pay Dearness Allowance fixed by the Board to every individual based on the Consumer Price Index. The Dearness Allowance, therefore, is statutory in character, payable by the registered employer to the workmen registered under the Scheme and any settlement which has the effect of depriving the workmen the said benefit to that extent would be illegal, null and void. We are, therefore, clearly of the opinion that the said payment is statutory in character.

. The issue whether wage is payable based on piece rate or otherwise in our opinion is besides the point. Wages can be on hourly basis, on monthly time scale, on piece rate basis or any other method prevailing in the industry or based on a settlement entered into between the employer and the workmen. The nature of the basic wage will make no difference. Dearness Allowance is payable so as to protect the workmen, from the erosion of his purchasing power consequent on rise in cost of living. It is to offset the increased burden that the workmen has to pay to sustain himself and his family. Dearness Allowance, therefore, is distinct and different from the basic wage whether piece

rate or otherwise. The Dearness Allowance therefore, fixed by the Board being statutory in character is payable by all registered employers whatever be the method by which the basic wage is fixed.

7. Apart from that, the settlement of 1996 clearly contains a provision that the company would discuss on the issue of payment of DA whether it be statutory. The Board contends that it was finally agreed. The petitioners dispute the same. At any rate in the settlement of 5th November, 1999 there was an express provision in Clause 1 for payment of an amount equivalent to D.A. declared from time to time on the basic wages. The contention urged on behalf of the petitioner is that it only applies to one category of workmen called "Warai". In our opinion there is no reason or explanation given as to why only persons working as Warai should get D.A. and not other categories as set out therein. The settlement must be read to mean the basic wage plus the levy plus the dearness allowance. That argument has also to be rejected, considering Clause 2 of the Settlement which makes it clear that apart from the amount set out in Clause 1 no other amount will be payable. The amount payable includes D.A. It is, therefore, clear that atleast in the settlement of 5th November, 1999 D.A. was payable. In the settlement of 2000 which we have referred to and from the xerox copy of the original Marathi version of the settlement the Dearness Allowance was to be subject to the decision in this petition. The petition was

filed in the year 2000. The settlement was of August, 2003 with effect from 1st January, 2002. Having held that the registered employer is bound to pay the Dearness Allowance the demand made by the Board is legal and within their competence.

8. In the light of the above petition dismissed. Rule discharged. There shall be no order as to costs.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**